(127) AFR

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : **Hon'ble Shri S.R. Nayak, CJ**
& Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO.2346 OF 2005

ORDER FOR CONSIDERATION

Sd/-
Chief Justice

HON'BLE SHRI SATISH K. AGNIHOTRI, J.

Sd/-
Satish K. Agnihotri
Judge

POST FOR ORDER : 13 /12/2005

Sd/-
Chief Justice

(128)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : **Hon'ble Shri S.R. Nayak, CJ**
& Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO.2346 OF 2005

PETITIONER : Mani Shankar Pandey
S/o Late Shri Ramkhilawan Pandey,
Aged 34 years,
R/o Maharana Pratap Nagar,
Tifra, Bilaspur (C.G.)

VERSUS

RESPONDENTS :

(1) Union of India
Through: Secretary, Ministry
of Petroleum and Natural Gas,
Shastri Bhawan, Dr. Rajendra
Prasad Road, New Delhi.

(2) Ministry of Road Transport &
Highways, Through: Secretary,
1, Sansad Marg, New Delhi.

(3) Hindustan Petroleum Corporation
Ltd., Through: Regional Manager,
Madina Manzil, Medical College
Road, Raipur (C.G.)

(4) The Collector & District Magistrate
Bilaspur (C.G.)

(5) M/s. Astha Service Station,
Through: its Proprietor,
Khagendra Manhar,
Aged about 41 years,
R/o Bhartiya Nagar,
Bilaspur (C.G.)

(6) M/s. Gumber Service Station
(Petrol Pump)
Through: Proprietor,
Sirgitti, Bilaspur,
District: Bilaspur (C.G.)

Present: Mr. Ravish Verma, learned counsel for the petitioner.

Mr. Bhishma Kinger, learned Standing Counsel for respondents 1 and 2.

Mr. Sachin Singh Rajput, learned counsel for respondent No.3.

Mr. Prashant Mishra, learned Additional Advocate General, with Mr. Sumesh Bajaj, learned Dy. Govt. Advocate, for respondent No.4.
Mr. R.S. Patel, learned counsel for respondent No.5.
Mr. P. Diwakar, learned Sr. Advocate, with Mr. A.S. Kachwaha, learned counsel for respondent No.6.

ORDER
(Passed on 13 of December, 2005)

The following Order of the Court was passed by **S.R. Nayak, CJ: -**

This case brings to the fore how a noble, laudable and public justice-oriented legal process, that is what we call "Public Interest Litigation" which is essentially and initially meant to provide legal representation to previously unrepresented groups and citizens, can be misused and abused by unscrupulous persons, without any element of public interest either in their heart or in mind, to have their own axe to grind against an individual for an oblique consideration and as a vexatious measure.

(2) The facts are simple, and in brief, they are: The petitioner is a permanent resident of Maharana Pratap Nagar, Tifra in Bilaspur City. The petitioner claiming to be a *pro bono* public character has filed this writ petition as a Public Interest Litigation (*hereinafter referred to as 'the PIL'*) to espouse cause of the public at large. The petitioner has stated that the fifth respondent is a business concern which is running a fuel outlet in Bilaspur and at present that fuel outlet is situate at Vyapar Vihar in Bilaspur City. The fifth respondent made an application to the Collector and District Magistrate, Bilaspur for no objection certificate to shift the fuel outlet from the existing place to the premises bearing Nos.1435/1, 1435/2, 1436 and 1459. The fourth respondent has granted 'no objection

certificate' to the fifth respondent. It is alleged that the fifth respondent is shifting fuel outlet in utter violation of the guidelines and norms prescribed in Circular No.RW/NH-33023/19/99-DO III dated 31st August 2000 issued by the National Highways Authority. It is also alleged that the fifth respondent did not apply to the Ministry of Road Transport & Highways, the second respondent herein, for shifting and setting up Fuel Outlet at a new place as required under the circular dated 31st August 2000. It is further alleged that if the fifth respondent is permitted to shift Fuel Outlet, it will be totally dangerous to public safety and road safety and it would also cause inconvenience to motorists traveling on National Highway No. 200 from Bilaspur resulting in frequent accidents. In the premise of the above allegations, the petitioner has prayed for the following reliefs:

> "In view of facts stated above and the petitioner prays for the following reliefs:
>
> (i) That no objection certificate issued by respondent No. 4 for setting up of fuel station with diesel retail outlet at Khasra No. 1435/1, 1435/2, 1436, 1459 area 18525 sq. ft., Sec. C, CSIDC Tifra – Sirgitti dated 05.03.05 may be cancelled and quashed in the interest of justice, equity and good conscience.
>
> (ii) That the Hon'ble Court be pleased to issue any other writ or writs, order or orders, direction or directions deemed fit in the interest of justice."

(3) This Court having entertained the writ petition, by its interim order dated 24/06/2005, directed that pending disposal of the writ petition, the work for setting up of fuel station with diesel retail outlet at Khasra Nos.1435/1, 1435/2, 1436 and 1459 may continue, but will be entirely at the risk of respondent No.5.

(4) On service of notice respondents 1 and 2, namely, Union of India and Ministry of Road Transport & Highways, respectively, put in appearance and filed their return on 26/07/2005 virtually reiterating the allegations made by the petitioner and supporting the writ petition. Respondent No.5 also on service of notice put in appearance through his counsel and filed an application on 27/07/2005 for vacating the interim order dated 24/06/2005. In the said application, the fifth respondent while denying all material allegations leveled against it by the petitioner has alleged that the petitioner is not a *pro bono* public character; the petitioner never espoused any cause by way of a PIL earlier; the petitioner is a contractor and the fifth respondent supplied petrol, diesel and automobile oil to the petitioner on credit basis between 22/05/1997 and 25/07/2004 and he did not clear the bills for Rs.1,11,735.12 paisa. When the fifth respondent demanded payment of outstanding dues, the petitioner being annoyed by the said demand and in order to harm him, he has filed the writ petition under the garb of PIL. It is also stated that the proprietor of the fifth respondent is a scheduled caste person and the petitioner has been torturing him mentally not only by not paying outstanding dues but also subjecting him to vexatious litigation. The fifth respondent has also produced bills as document No.1 to show that the petitioner has drawn petrol, diesel and motor vehicles' oil from the Fuel Outlet owned by it. It is also alleged that the status claimed by the petitioner that he is a social worker and *pro bono* public character and he has been espousing the causes for protecting the public interest are all utterly false and the present writ petition is filed as a vexatious measure to harm the innocent fifth respondent.

(5) We have heard learned counsel for the parties in great elaboration and for considerable time. It needs to be stated at the

threshold that unfortunately learned counsel for the fifth respondent did not bring to our notice at the threshold of the arguments about the financial dealings the petitioner had with him and a sum of Rs.1,11,735.12 paisa due from the petitioner towards supply of petrol, diesel and automobile oils and the allegations made by him against the petitioner in his application filed by him on 27/07/2005 and that fact was brought to our notice only at the fag end of hearing. If the learned counsel for the fifth respondent were to disclose the uncontroverted facts stated by the fifth respondent in his application, perhaps, we would not have heard the learned counsel for the petitioner so long. Learned counsel for the petitioner in all fairness, ought to have brought the uncontroverted facts and allegations made against his client in the application of the fifth respondent dated 27-07-2005 for vacating stay. Learned counsel for the petitioner guardedly withheld that information from our notice till the last. Furthermore, even after we pointed out to the learned counsel about the *malafide* intention of the petitioner in instituting this writ petition by way of PIL, he did take considerable time to argue and highlight on the merit of the case to the detriment of other advocates waiting for their cases. Learned counsel for the petitioner vehemently argued on behalf of his client on the basis of the unfounded allegations made in the writ petition for considerable time. It needs to be noticed at this stage itself that the petitioner has not traversed the allegations made by the firth respondent in his application dated 27/07/2005. Furthermore, even during the course of hearing the correctness of those allegations was not contested.

(6) In the premise of the facts borne out from the records, the first concern of the Court is whether this Court should entertain this writ petition filed by the petitioner as PIL notwithstanding the merit and demerit of the case.

(7) The petitioner has filed this writ petition claiming to be a *pro bono* public character; he has been taking up the cause of the public to sub-serve the public interest. In para 5.1 of the writ petition he has stated that "he is a public spirited citizen who always makes endeavours for taking up the causes for community benefit" and that he has approached the Court for redressal for the wrong done to general public by way of public interest litigation. The question is whether there is any semblance of truth in the above assertion. It is now satisfactorily established that the petitioner is a contractor and a businessman; he has borrowed petrol, diesel and automobile oils on credit basis from the fifth respondent and he has to pay a sum of Rs.1,11,735.12 paisa to the fifth respondent towards its cost. It is also clear that the present writ petition is the only writ petition filed by the petitioner as public interest litigation and before he never filed any writ petition as PIL to espouse the cause of the public at large. Should we say that this PIL is the first attempt of the petitioner; should we say let it be the last attempt of the petitioner also if the same baseness which prompted the petitioner to file this PIL is going to be the base for future PILs also. The Court should throttle any such attempt on the part the petitioner.

(8) PIL has been a significant American development. The Council for Public Interest Law set up by the Ford Foundation in U.S.A., in its report (1976) at pp. 6-7 defined PIL thus :

> "Public Interest Law is the name that has recently been given to efforts to provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in recognition that the ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the poor,

environmentalists, consumers racial and ethnic minorities and others".

PIL programmes focus on policy-oriented cases, where a decision will affect large numbers of people or advance a major law reform objective. The consequences extend well beyond the particular litigants. PIL programmes are also designed to provide legal services to undeserved groups on matters of immediate concern only to the parties directly involved. PIL in India has been used for various types of reliefs for undertrial prisoners in jails, amelioration of the conditions of detention in protective homes for women, for medical check-up of remand home inmates, prohibition of traffic in women and relief for their victims, for the release of bonded labour, enforcement of other labour laws, e.g. full and direct payment of wages to workers or prohibiting the employment of children in construction work, acquisition of cycle rickshaws by licensed rickshaw pullers, relief against custodial violence to women prisoners while in police lock-up, for environmental protection, for enforcement of gender equality and protection from sexual harassment and the like. Such litigation envisages that a Court action by an individual or a group of individuals belonging to a community or an indeterminate class against an administrative wrong, remotely or equally affecting the members of that community or class; and that a Court action by a public spirited citizen or a body devoted to the public cause to vindicate the rights of individuals, groups or even the public at large against administrative wrongs, though the person or body undertaking the Court action may not have suffered any injury. Manifold reasons are stated to justify PILs; it provides a means to redress public wrongs which remained unremedied under the traditional rules of *locus standi;* the individuals or groups suffering from adverse administrative action may not themselves be in a position to undertake litigation to vindicate their interests because of

poverty, ignorance, illiteracy, fear and other forms of socio-economic disabilities. In ***S.P. Gupta Vs. Union of India*** (AIR 1982 SC 149) Bhagwati, J. has pointed out that individual rights and duties are giving place to meta-individual, collective, social rights and duties of classes or groups of persons.

(9) Two main propositions concerning PILs surface from the decisions of the Apex Court. In ***S.P. Gupta's case*** (supra) the Supreme Court has observed thus :

> "…..whenever there is a pubic wrong or public injury caused by an act or omission of the State or public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury."

Further the Supreme Court in ***Peoples Union for Democratic Rights Vs. Union of India*** (AIR 1982 SC 1473) has observed thus

> "…..where a person or class of persons to whom legal injury is caused or legal wrong is done is by reason or poverty, disability or socially or economically disadvantaged position not able to approach the Court for judicial redress, any member of the public acting ***bona fide*** and not of any extraneous motivation may move the Court for judicial redress of the legal injury or wrong suffered by such person or class of persons."

In both the propositions, an emphatic and terse caution is administered by the Supreme Court that the person approaching the Court for redressal of a public wrong or public injury has sufficient interest in the proceedings and is acting ***bona fide*** and not for personal gain or private profit or political motivation or other oblique considerations.

(10) The Court, in this case need not add much to the abundance of the principles governing PILs. Dealing with PILs, the Apex Court, this Court and other High Courts in a catena of decisions quite extensively dealt with the questions, such as, who can be considered to be a *pro bono* public character, what kinds of dispute could be brought before the Constitutional Courts in the form of PILs, the circumspection to be exercised by the Courts before entertaining a PIL, the danger of entertaining applications filed under Article 226 of the Constitution with a façade or under a garb of PILs. To cite the few are the decisions of the Apex Court in ***M.C. Mehta Vs. Union of India*** {(1998) 9 SCC 589}; ***Vishaka Vs. State of Rajasthan*** {(1997) 6 SCC 241}; ***S.P. Anand Vs. H.D. Deve Gowda*** {(1996) 6 SCC 734}; ***Janata Dal Vs. H.S. Choudhary*** {AIR 1993 SC 892}, ***Abdul Rehman Antulay and others Vs. R.S. Nayak and another*** {(1992) 1 SCC 225}; ***Kishan Patnaik Vs. State of Orissa*** {1989 (1) SCALE 32}; ***Sachidanand Pandey Vs. State of W.B.*** {1987 (2) SCC 295 = AIR 1987 SC 1109}; ***Olga Tellis Vs. Bombay Municipal Corporation*** {(1985) 3 SCC 545}; ***State of Himachal Pradesh Vs. Parent of a Student Medical College Simla and others*** {(1985) 3 SCC 169}; ***Bandhua Mukti Morcha Vs. Union of India*** {AIR 1984 SC 802}; ***People's Union for Democratic Rights Vs. Union of India*** (supra); ***S.P. Gupta Vs. Union of India*** (1 supra); ***fertilizer Corporation Kagar Union, Sindri and others Vs. Union of India and others*** {(1981) 1 SCC 568}; ***Hussainarakhatoon Vs. Home Secretary, State of Bihar*** {AIR 1979 SC 1360}; ***Sunilbatra Vs. Delhi Administration*** {AIR 1978 SC 1675}; ***M.H. Hoskot Vs. State of Maharashtra*** {AIR 1978 SC 548} and the decisions of Andhra Pradesh High Court in ***K. Hanumantha Rao Vs. Prl. Sub-Judge*** {1997 (4) ALT 444 (DB)}; ***K. Prabhakar Reddy Vs. State of***

Andhra Pradesh {1998 (2) ALT 1 (DB)}; ***B. Kistaiah Vs. Government of India*** {1998 (4) ALT 738 (DB)}.

(11) What can be gathered from these pronouncements can be stated briefly thus: Ordinarily it is the person aggrieved and directly affected who must seek the relief himself unless disabled from doing so on account of socio-economic disabilities and only in such event the law permits someone else to seek the relief on his behalf. PIL is essentially to ensure observations of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, acting *bona fide* and having genuine interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like *actio popularis* of Roman Law whereby citizen could bring such an action in respect of a public delict. Individual dispute cannot be subject matter of a PIL and any attempt in that regard should be discouraged by the Court, and it is only in the clearest of cases of general affectation of right of the community at large or a wide variety of cross-section of people, the Court would extend its assistance by entertaining a PIL so as to avoid any social or general mischief having due regard to the concept of justice. However, only a person acting *bona fide* and having sufficient interest in the proceeding of PIL will alone have a *locus standi* and can approach the Court for the poor and needy, suffering from violation of their fundamental rights or other legal rights and to enforce public law duties against the administration. But a person for personal gain or private profit or political motive or any oblique consideration has no *locus standi*. Similarly, a vexatious petition under the colour or garb of PIL brought before the Court for vindicating any personal grievance, deserves rejection at the threshold. The Court should not allow its process to be abused by mere busybodies,

meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest in their mind or heart except for personal gain or private profit or political mileage either for themselves or as proxy of others or for any other extraneous motivation or collateral consideration or for gaining publicity.

(12) If the above principles are applied to the facts of this case, can it be said that the petitioner is a *pro bono* public character ? The answer should be emphatic 'No'. There is a total lack of *bona fide* in the action of the petitioner in instituting this writ petition as a PIL. On the other hand, it is satisfactorily established that this writ petition is filed in the garb of a PIL as a vexatious measure, annoyed by the demand by the fifth respondent to pay him sum of Rs.1,11,735.12 paisa towards the outstanding dues, being the cost of petrol, diesel and automobile oils supplied by the fifth respondent. In that view of the matter, we are of the considered opinion that this writ petition does not deserve our acceptance as a public interest litigation. The petitioner has abused the process of law to indirectly achieve his goal to subject the fifth respondent to unnecessary litigative process and thereby to cause harm to him.

(13) Before concluding a word or two about the accountability of the petitioner in moving this Court by way of petition under Article 226 of the Constitution under the garb of PIL. The time of the Court is public time; it is neither the time of the Judges nor the time of the litigant or his counsel; the public time should be spent judiciously and economically; insistence of such rule is absolutely necessary particularly in the context of alarming pendency of cases in Law Courts and other judicial and quasi-judicial fora today. The Court's time should not be allowed to be misused or abused by unscrupulous litigants or busy-bodies in the garb of

PILs. That is also responsibility cast on the learned members of the Bar in espousing the cause of the public by way of PILs. Lawyer plays a very crucial and important role in public interest litigation. His duty and responsibility to the Court in a Public Interest Litigation case is even greater in comparison to usual cases. The Lawyers' repertoire and forensic skills and craftsmanship are central to a purposeful use of judicial processes as instruments of institutional reforms. An Advocate is an integral part of administration of Justice. The legal fraternity and judiciary are the two sides of the same coin. The Court would not be wrong in expecting that every advocate would conduct himself in responsible manner and assist the Court properly in discharge of this legal and constitutional obligations. They do act, plead and advocate the cause of the clients but their duty to Court is much higher than that of serving their clients. It is stated that every advocate is an ***amicus curiae***, a friend of the Court; his first loyalty is to the Court and not to his client. The Court's time is not meant for the satisfaction of the ego of a judge who presides over the Court that he knows the whole law correctly and there cannot be a second opinion on the point addressed to the Court, nor to satisfy the counsel himself who appears for a party that he could put forth any plea or point irrespective of its tenability in the legal premise, nor to please a party sitting behind his counsel that his counsel did argue the case on his behalf marvelously and to his satisfaction. Adjudicatory deliberations in a Law Court are serious pursuits, and they should receive responsible and constructive co-operation from both the partners of the institution, and both of them shall practice and do everything at their command to save the precious time of the Court without sacrificing justice. Such a course has become imperative necessity in the Constitutional Courts where the accumulation of the cases is alarming as well as long pending. Fruitful

management of the Court's time is need of the hour and that cannot be achieved without constructive co-operation between the Bar and the Bench.

(14) Time has come for the Constitutional Courts not only to nip the unscrupulous and unjustified PILs at the bud but also to make the movers of such PILs accountable in concrete terms. Mere disapproval of such PILs by the Courts by way of observations in the judgment will not help the public justice in the long run. The State spends huge sums of money out of the limited resources to provide, maintain and conduct apparatus of adjudicatory processes. If the Court finds that the adjudicatory process is abused or misused wantonly by a person under the garb of PIL, it is but necessary to make him accountable for his litigative luxury, in order to subserve the public interest. Public interest will never be permitted to suffer in a Public Interest Litigation. That can be achieved by imposing exemplary costs. One cannot have the pleasure of an unjustified PIL at the cost of the public just paying Rs. 100/- towards Court fee, a pittance when compared to the actual cost incurred by the State.

(15) The Supreme Court in ***Janata Dal vs. H.S. Chowdary*** (supra) expressed its total displeasure and disgust in wasting the Court's time on account of trumpery proceedings initiated under the garb of PILs in the following words:

> "It is depressing to note that on account of such trumpery proceedings initiated before the Courts innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our long arm of sympathy to the poor, the

ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal case in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in service matters, Government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders, etc.etc., - are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Court never moves which piquant situation creates a frustration in the minds of the genuine litigants and resultantly they loss faith in the administration of our judicial system."

(16) A person who desires to persist with his view point despite the fact that the point which he canvases before a judge has no legs to stand by the binding decisions of the larger Benches of the Court and in the process wastes the Court's time shall be made to pay the price for the wastage of public time, at least notionally, if not fully. Such course is a

'must' not only to curb unjustified and vexatious PILs but also to do justice to the public. The observation of the Supreme Court in ***S.P. Anand vs. H.D. Deve Gowda*** (supra) is apt to be quoted :

> "...it must also be borne in mind that no one has a right to the waiver of the *locus standi* rule and the Court should permit it only when it is satisfied that the carriage of proceedings in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the Court must be careful to ensure that the process of the Court is not sought to be abused by a person who desires to persist with his point of view almost carrying it to the point of obstinancy by filing a series of petitions refusing to accept the Court's earlier decisions as concluding the point. We say this because when we drew the attention of the petitioner to earlier decisions of this Court, he brushed them aside, without so much as showing willingness to deal with them and without giving them a second look, as having become stale and irrelevant by passage of time and challenged their correctness on the specious plea that they needed reconsideration he had no answer to the correctness of the decisions. Such a casual approach to considered decisions of this Court even by a person well-versed in law would not be countenanced. Instead, as pointed out earlier he referred to decisions having no bearing on the question like the decisions on cow slaughter cases, freedom of speech and expression, uniform civil code etc. we need say no more except to point out that indiscriminate use of this important lever of public interest litigation would blunt the lever itself."

(17) After necessary reflection, we are of the considered opinion that the instant Writ Petition is not a *bona fide* PIL and it is filed by the petitioner under the garb of PIL for an oblique consideration and as a

vexatious measure to harass the fifth respondent to settle a score with him.

(18) In the result, and for the foregoing reasons, the writ petition is dismissed with exemplary costs quantified at Rs.10,000/- (Rupees Ten Thousand Only) and the same shall be paid to the High Court Legal Services Committee within a period of two weeks from today. The High Court Legal Services Committee shall report whether the petitioner has complied with the direction after two weeks.

(19) Before parting with this case we make it clear that if shifting of the fuel outlet by the fifth respondent from the existing place to new place violates any norms or regulations, it is open for the statutory authorities to take appropriate action against fifth respondent in accordance with law and this order would not come in their way.

Sd/-
Chief Justice

Sd/-
Satish K. Agnihotri
Judge

Brajesh*